

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ALABAMA
EASTERN DIVISION

UNITED STATES OF AMERICA,)
)
 vs.) CASE NO. 1:98-CR-0024-SLB-SGC
)
 LAFOREST CARMICHAEL,)
)
 Defendant.)

MEMORANDUM OPINION AND ORDER

This case is presently pending before the court on defendant's Motion for Reconsideration to Reduce Sentence and Supervised Release Pursuant to Section 404 of the First Step Act of 2018. (Doc. 123.)¹ This Motion is **DENIED**.

Defendant cites *United States v. Venable*, 943 F.3d 187 (4th Cir. 2019), as establishing his right to a reduction under the First Step Act for the revocation sentence he is currently serving.² The *Venable* case, however, is not binding on the court and the Eleventh Circuit has yet to address this issue. Even if the court could apply the First Step Act to a probation revocation sentence, it declines to do so in this case.

¹Reference to a document number, ["Doc. ____"], refers to the number assigned to each document as it is filed in the court's record.

²The court notes that Carmichael's sentence for his underlying offense was previously reduced pursuant to the Fair Sentencing Act and 18 U.S.C. § 3582(c)(2). Therefore, he received the benefit of Guidelines established by the Fair Sentencing Act and is not entitled to a further reduction pursuant to the First Step Act.

Section 404(c) of the First Step Act states, “Nothing in this section shall be construed to require a court to reduce any sentence pursuant to this section.” Following a hearing, the court found that Carmichael had violated the conditions of his supervised release and therefore revoked his supervised relief. (*See* docs. 102 and 107.) This court sentenced Carmichael to three years pursuant to 18 U.S.C. § 3583(g). (Doc. 107.) The Eleventh Circuit affirmed. *See United States v. Carmichael*, 777 Fed. Appx. 977, 979 (11th Cir. 2019)(doc. 118-1 in the court’s record), *cert. denied* 140 S. Ct. 981 (2020).

Considering defendant’s state-court convictions while on supervised release,³ and assuming the court has the discretion under the First Step Act to reduce his sentence on revocation, the court declines to exercise that discretion. (*See* doc. 118-1 at 4)

Therefore, Carmichael’s Motion to Reconsider, (doc. 123), is **DENIED**. Other pending Motions regarding his claim for a reduction in his sentence pursuant to the First Step Act, (docs. 119 [Motion for Ex Parte Status Conference]); (doc. 121 [Supplement

³A jury convicted Carmichael of trafficking marijuana in violation of Ala. Code § 13A-12-231; possessing a firearm in violation of Ala. Code § 13A-11-72(a); unlawful possession of oxycodone, a controlled substance, in violation of Ala. Code § 13A-12-212; unlawful possession of methamphetamine, a controlled substance, in violation of Ala. Code § 13A-12-212; and unlawful possession of drug paraphernalia (scales) in violation of Ala. Code § 13A-12-260(a)(5). (*See* docs. 102 and 115.)

Motion to Reduce Sentence and Supervised Release Pursuant to Section 404 of the First Step Act of 2018)]; (doc. 127 [Motion to Reduce Sentence and Revocation of Supervised Release Pursuant to Section 404 of the First Step Act of 2018]); are **DENIED** as **MOOT**.

DONE this 10th day of April, 2020.

Sharon Lovelace Blackburn

SHARON LOVELACE BLACKBURN
UNITED STATES DISTRICT JUDGE